

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION**

Estate of Jeffrey Lynn Filek	*	Case No.
Plaintiff,	*	Honorable
vs.	*	(Removal from
National Union Fire Insurance Company	*	Genesee County Circuit Court)
of Pittsburgh, PA	*	<b><u>NOTICE OF REMOVAL</u></b>
Defendant.	*	

Defendant National Union Fire Insurance Company of Pittsburgh, PA ("National Union"), by and through attorney of record Margaret G. Beck of Brady, Coyle & Schmidt, Ltd., submits this notice of removal pursuant to 28 U.S.C. § 1446 and states as follows in support:

1. Plaintiff filed a Complaint in the Circuit Court for Genesee County, Michigan on or about July 29, 2014, commencing the action *The Estate of Jeffrey Lynn Filek, deceased, by the Personal Representative, Jeffrey D. Filek v. National Union Fire Insurance Company of Pittsburgh, PA* (case no. 14-103217). A copy of the Complaint is attached as Exhibit A.

2. Defendant National Union was served with a copy of the Summons and Complaint on September 26, 2014.

3. Plaintiff alleges that he is a resident of Genesee County, State of Michigan. (See Complaint, ¶ 2.)

4. National Union is a corporation organized under the laws of Pennsylvania with its principal place of business in the State of New York.

5. Plaintiff is a citizen of Michigan and Defendant is a corporate entity located in New York, creating a complete diversity of citizenship based on 28 U.S.C. § 1332(a).

6. Plaintiff's Complaint does not allege a specific amount of damages but seeks in excess of \$25,000.00.

7. Upon information and belief, Plaintiff's demand will exceed \$75,000.00 as required pursuant to 28 U.S.C. § 1332(a)(2).

8. This removal is timely pursuant to 28 U.S.C. § 1446.

For the foregoing reasons, Defendant National Union Fire Insurance of Pittsburgh, PA removes this action from the Circuit Court for Genesee County, Michigan to the United States District Court for the Eastern District of Michigan, Southern Division.

**BRADY, COYLE & SCHMIDT, LTD**

By /s/ Margaret G. Beck  
Margaret G. Beck (P49091)  
[mgbeck@bcslawyers.com](mailto:mgbeck@bcslawyers.com)  
4052 Holland-Sylvania Road  
Toledo, OH 43623  
Telephone: (419) 885-3000  
Facsimile: (419) 885-1120  
Attorney for Defendant

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing was filed electronically this 23<sup>rd</sup> day of October, 2014. Notice of this filing will be sent to all parties by the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Margaret G. Beck  
Margaret G. Beck (P49091)

STATE OF MICHIGAN JUDICIAL DISTRICT 7th JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS AND COMPLAINT	CASE NO. <b>14 - 103217-</b>
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Court address

900 S. Saginaw Street, Flint, MI 48502

Court telephone no.

**JOSEPH J. FARAH**  
**P-30439** (810) 257-3220

Plaintiff's name(s), address(es), and telephone no(s).

 THE ESTATE OF JEFFREY LYNN FILEK, deceased, by  
 the Personal Representative, Jeffrey D. Filek

v

Defendant's name(s), address(es), and telephone no(s).

 NATIONAL UNION FIRE INSURANCE COMPANY OF  
 PITTSBURGH, PA

Plaintiff's attorney, bar no., address, and telephone no.

 Christopher J. Trainor (P42449)  
 Shawn C. Cabot (P64021)  
 9750 Highland Road  
 White Lake, MI 48386  
 248-886-8650

 National Union Fire Insurance Company of Pittsburgh, PA  
 c/o CSC-Lawyers Incorporating Service Co  
 601 Abbot Road  
 East Lansing, MI 48823
**SUMMONS NOTICE TO THE DEFENDANT:** In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside this state). (MCR 2.111(C))
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued <b>JUL 31 2014</b>	This summons expires <b>OCT 30 2014</b>	Court clerk <i>Stephanie Davis</i>
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\*This summons is invalid unless served on or before its expiration date.

This document must be sealed by the seal of the court.

**COMPLAINT** *Instruction: The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.***Family Division Cases**

- ☐ There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.
- ☐ An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in \_\_\_\_\_ Court.
- The action ☐ remains ☐ is no longer pending. The docket number and the judge assigned to the action are:


Docket no.	Judge	Bar no.
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**General Civil Cases**

- ☒ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- ☐ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in \_\_\_\_\_ Court.
- The action ☐ remains ☐ is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
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**VENUE**

Plaintiff(s) residence (include city, township, or village) City of Burton, County of Genesee	Defendant(s) residence (include city, township, or village) County of Genesee
Place where action arose or business conducted Genesee County	

07/29/2014

Date

Signature of attorney/plaintiff

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

## PROOF OF SERVICE

## SUMMONS AND COMPLAINT

Case No.

**TO PROCESS SERVER:** You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

## CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE

☒ OFFICER CERTIFICATE

OR

☐ AFFIDAVIT OF PROCESS SERVER

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)

Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notarization required)

☐ I served personally a copy of the summons and complaint,  
☒ I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint, together with interviews, requests for production of documents & deposition notes  
 List all documents served with the Summons and Complaint

on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time
National Union Fire Insurance Company	601 Abbot Road, East Lansing, MI 48823	
of Pittsburgh, PA		
CSC-Lawyers Incorporating Service Co		

☐ I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

I declare that the statements above are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Mileage fee	Total fee
\$		\$	\$

Signature

Name (type or print)

Title

Subscribed and sworn to before me on \_\_\_\_\_, \_\_\_\_\_ County, Michigan.  
 Date

My commission expires: \_\_\_\_\_ Signature: \_\_\_\_\_  
 Date Deputy court clerk/Notary public

Notary public, State of Michigan, County of \_\_\_\_\_

## ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the summons and complaint, together with

Attachments

on

Day, date, time

-on behalf of

Signature



**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE**

THE ESTATE OF JEFFREY LYNN FILEK, deceased,  
by the Personal Representative, JEFFREY D. FILEK,

Plaintiff,

v.

NATIONAL UNION FIRE INSURANCE COMPANY  
OF PITTSBURGH, PA,

Defendant.

**14 - 103217 -**

CASE NO: 14-CK  
HON:

**JOSEPH J. FARAH**  
P-30439

CHRISTOPHER TRAINOR & ASSOCIATES  
CHRISTOPHER J. TRAINOR (P42449)  
AMY J. DEROUIN (P70514)  
SHAWN C. CABOT (P64021)  
Attorneys for Plaintiff  
9750 Highland Road  
White Lake, MI 48386

**A TRUE COPY**  
**Genesee County Clerk**

THERE IS NO OTHER PENDING OR RESOLVED CIVIL ACTION ARISING OUT OF THE TRANSACTION  
OR OCCURRENCE ALLEGED IN THE COMPLAINT.

**COMPLAINT AND JURY DEMAND**

**NOW COMES** Plaintiff, JEFFREY D. FILEK, Personal Representative for the ESTATE  
OF JEFFREY LYNN FILEK, by and through his attorneys, CHRISTOPHER TRAINOR &  
ASSOCIATES, and for his Complaint against the above-named Defendants, states as follows:

1. Plaintiff is a resident of Burton, County of Genesee, State of Michigan.
2. That Defendant is an insurer authorized to do business in the State of Michigan and as such,  
issues insurance policies throughout the State of Michigan, including the County of  
Genesee, State of Michigan.
3. That Defendant regularly does business throughout the State of Michigan, including but  
not limited to Genesee County.

4. That the amount in controversy exceeds Twenty-Five Thousand Dollars (\$25,000.00) exclusive of costs, interest, and attorney fees.

**FACTS**

5. Plaintiff realleges and incorporates by reference each and every paragraph of this Complaint as though fully set forth herein.
6. Plaintiff's decedent was a semi-truck driver and was only 57 years old at the time of his death.
7. Plaintiff's decedent had purchased an insurance policy from Defendant for accident-related occurrences and injuries or death.
8. The Policy Number of the insurance policy purchased through Defendant was TRK9028670.
9. On March 2, 2012, Plaintiff's decedent died of a large saddle pulmonary embolus, which generally are caused from clots that form in the lower legs, and when they break free, form a blockage where the pulmonary artery leaves the heart, thereby causing death.
10. Such a condition is caused by being in a sitting position for extended periods of time, as is a common condition among truck drivers.
11. After the death of Plaintiff's decedent, claims to obtain the insurance proceeds were timely made.
12. The Claim number was 783-010080-NS-01.
13. Despite timely claims and appeals however, Defendant continued to unlawfully deny the claim.

**COUNT I**  
**BREACH OF CONTRACT**

14. Plaintiff realleges and incorporates by reference each and every paragraph of this Complaint as through fully set forth herein.
15. Plaintiff's decedent paid specific premiums for an insurance policy issued by Defendant, and as such, became entitled to certain benefits pursuant to said policy at the time of his death.
16. After the death of Plaintiff's decedent, the proper claim forms and other requisite documents were completed so that the insurance proceeds could be collected.
17. That by reason of the death of Plaintiff's decedent, the estate became entitled to certain benefits under the policy and demand for payment of such benefits has been made.
18. Under the terms of the policy issued by Defendant, it became the obligation of Defendant to pay all requisite benefits pursuant to the terms of the insurance policy.
19. Plaintiff has requested payment for all the benefits that are due and owing; but said requests have been denied. The monies are due and owing to Plaintiff from Defendant.
20. Defendant's refusal to make payment and to pay benefits under the terms of the insurance policy is unwarranted and unreasonable, and in violation of the terms of the contract, and any and all applicable statutes and laws.

**COUNT II**  
**BAD FAITH**

21. Plaintiff realleges and incorporates by reference each and every paragraph of this Complaint as though fully set forth herein.
22. Defendant acted in bad faith in denying the insurance claim.

23. Defendant completely ignored the statement from the medical examiner who carried out the autopsy of Jeff Filek, and who stated that "the death of Mr. Filek is strongly related to his choice of occupation."

24. Despite the aforementioned evidence, Defendant continued to deny paying the life insurance benefits which were due and owing.

**WHEREFORE**, Plaintiff requests judgment against Defendant in whatever amount in excess of Twenty Five Thousand (\$25,000.00) Dollars as is found to be reasonable and just, plus interest, costs and attorney fees so wrongfully sustained. Plaintiff is also entitled to treble damages pursuant to MCL 600.2919a.

Respectfully submitted,

CHRISTOPHER TRAINOR & ASSOCIATES

BY: 

CHRISTOPHER J. TRAINOR (P42449)

AMY J. DEROUIN (P70514)

SHAWN C. CABOT (P64021)

Attorneys for Plaintiff

9750 Highland Road

White Lake, MI 48386

(248) 886-8650

Dated: July 29, 2014  
SCC/